

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

_____	:	Index No.
CITYSIDE ARCHIVES LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<u>COMPLAINT</u>
	:	
GREENSPOON MARDER LLP,	:	
	:	
Defendant.	:	
_____	:	

Plaintiff Cityside Archives LLC (together with its affiliates or predecessors, “Plaintiff” or “Cityside”), by and through its undersigned attorneys, and by way of this Complaint against defendant Greenspoon Marder LLP (“Greenspoon Marder”), alleges the following:

NATURE OF ACTION

1. This action arises out of the Storage and Service Agreement, effective April 1, 1994, as amended on or about October 5, 2011 (together, “the Agreement”), originally entered into by Cityside, a company engaged in the business of records storage and management, and the law firm of Jacob, Medinger & Finnegan, LLP (“Jacob Medinger”). Greenspoon Marder acquired Jacob Medinger in early 2016. By operation of law, through its subsequent statements and actions, as well as pursuant to express provisions of the Agreement, Greenspoon Marder succeeded to, assumed, and undertook Jacob Medinger’s obligations under the Agreement in full. In 2018,

however, Greenspoon Marder expressly repudiated the Agreement. Cityside seeks a declaratory judgment that Greenspoon Marder is bound by the Agreement.

2. Upon wrongly repudiating the Agreement, Greenspoon Marder breached it. Accordingly, upon a declaration that Greenspoon Marder is a party to the Agreement, Cityside seeks damages against Greenspoon Marder for its breach.

THE PARTIES

3. Cityside is a limited liability company formed under the laws of New Jersey, with offices at 499 Mill Road, Edison Township, County of Middlesex, State of New Jersey 08837. Cityside's storage warehouses are located in Edison, New Jersey, and Jersey City, New Jersey.

4. Greenspoon Marder is a Florida limited liability partnership authorized to do business in New York, with offices at 590 Madison Avenue, Suite 1800, New York, New York, New York.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Greenspoon Marder because it is doing business in New York by maintaining an office with permanently-stationed attorneys conducting a regular practice of law within the State and because Greenspoon Marder transacted business with Cityside from New York by ordering Cityside's services from, taking delivery of stored materials from Cityside at, and paying its bills from its New York office.

6. Venue is proper in this Court because the contract which underlies the dispute was negotiated in the State of New York, County of New York, and a

significant part of the performance thereunder also took place in the State of New York, County of New York.

OPERATIVE FACTS

A. Background

7. The Agreement was fully executed on or about March 15, 1994, and made effective April 1, 1994.¹

8. On or about October 5, 2011, Jacob Medinger and Cityside entered into a written amendment.²

9. Pursuant to the Agreement, Jacob Medinger was to pay Cityside for its services under an incorporated schedule of rates, including but not limited to per-unit fees and charges for storage and retrieval, delivery, and refiling, as needed, of Jacob Medinger's "Stored Materials," chiefly consisting of boxes of client and other files.

10. In taking on the work of storing and managing Jacob Medinger's Stored Materials pursuant to the Agreement, Cityside agreed to facilitate the transfer of the initial Stored Materials from Jacob Medinger's prior file storage vendors. This included not only the physical transport of Jacob Medinger's Stored Materials housed with those prior vendors and the shelving and barcoding of said materials, but also the payment by Cityside of all the charges imposed by those prior vendors in connection with the permanent removal of the Stored Materials from those vendors' locations.

¹ A true copy of the Agreement, as originally executed, is attached as Exhibit A.

² A true copy of the amendment is attached as Exhibit B.

11. As of April 4, 2019, there are approximately 10,804 boxes in Cityside's inventory system pursuant to the Agreement.

12. The Agreement also provides for various events of default, including nonpayment of Cityside's invoices or its dissolution as a firm.³

13. Among other available relief upon an event of default, the Agreement entitles Cityside to demand that the client pick up the Stored Materials, deliver the Stored Materials, destroy the Stored Materials, terminate the Agreement, and apply various charges associated with termination, including Stored Material retrieval, permanent removal and/or destruction charges.

14. Jacob Medinger continued to use, and pay for, Cityside's services pursuant to the Agreement without issue through the early part of 2016.

B. Cityside Is Advised That Jacob Medinger Was Acquired By Greenspoon Marder

15. By letter dated March 16, 2016 ("March 16 Letter"), Cityside was advised, without any prior notice, that Jacob Medinger was being acquired by Greenspoon Marder.⁴

16. Prior to Greenspoon Marder's acquisition of Jacob Medinger, Greenspoon Marder had no office, and no lawyers, in the State of New York. Greenspoon Marder had never sought permission to conduct business in New York prior to its acquisition of Jacob Medinger.

³ *Id.* at ¶ 5.1.

⁴ A true copy of the March 16, 2016 letter is attached as Exhibit C.

17. All or nearly all, of the lawyers from Jacob Medinger joined, and created, Greenspoon Marder's office in New York. All or nearly all the partners of Jacob Medinger became partners of Greenspoon Marder, and the associates of Jacob Medinger became associates of Greenspoon Marder. Based on information and belief, at least for a year, Greenspoon Marder offices in New York were in the very same office space as Jacob Medinger at 1270 Avenue of Americas, 16th Floor, New York, New York.

C. Greenspoon Marder Assumes Jacob Medinger's Agreement with Cityside

18. The March 16 Letter, addressed to Cityside as a "Dear Valued Vendor," advised that Jacob Medinger was being "acquired by Greenspoon Marder Law" and would "cease to exist" as an independent entity after April 30, 2016. It advised Cityside to continue to provide the firm with "services or products," however, and to bill Greenspoon Marder:

We will continue to have the same address, but for any services or products rendered on or after 4/1/2016, please address all invoices to:

Greenspoon Marder Law
Attn: Accounts Payable
1270 Avenue of the Americas, 16th Floor
New York, NY 10020

19. As instructed, beginning in April of 2016, Cityside invoiced Greenspoon Marder on a monthly basis for storage and service fees, and for approximately twenty-two months following, those invoices were paid by Greenspoon Marder.

20. In addition to the act of paying the invoices for nearly two full years, Greenspoon Marder received the benefit of the services provided by Cityside in storing

materials, as well as receiving boxes at the request of its attorneys, all pursuant to the terms of the Agreement.

21. Specifically, Greenspoon Marder made multiple requests for boxes in storage, as well as access to boxes. In April of 2016, Greenspoon Marder requested fifteen boxes. In May of 2016, Greenspoon Marder requested twenty-four boxes. In June of 2016, Greenspoon Marder requested thirty boxes. In August of 2016, Greenspoon Marder requested forty-two boxes. In September of 2016, Greenspoon Marder accessed sixty boxes. It also tendered forty-seven boxes to Cityside for refilling.⁵ Cityside provided the services.

22. Although Cityside could have terminated the Agreement and demanded immediate payment of the various charges associated with the termination, including permanent removal of its Stored Materials, upon learning of Jacob Medinger's impending dissolution, which was an event of default under the Agreement, Cityside continued to provide services in reliance on the March 16 Letter and Greenspoon Marder's activity in the immediate aftermath thereof indicating to Cityside that Greenspoon Marder had assumed the Agreement and would continue to utilize Cityside's services thereunder and make payments therefor.

⁵ True copies of these invoices are attached as Exhibit D.

D. Greenspoon Marder Requests Permanent Removal of Stored Materials

23. In December of 2017, Greenspoon Marder requested delivery and permanent removal of approximately one-thousand six hundred boxes. Cityside advised of the cost, but no action was taken because full payment was never received.

24. In July of 2018, Greenspoon Marder against inquired as to the cost of permanent removal, this time for approximately nine thousand boxes. Cityside advised of the cost and again, no action was taken because full payment was never received.

E. It is Only After Greenspoon Marder Decides That It Does Not Want To Pay Cityside For Removal Services That It, For The First Time, Disavows Its Assumption Of the Agreement

25. After nearly two years of consistently requesting services and paying invoices, Greenspoon Marder failed to pay its March 2018 invoice. It then paid its April 2018 and September 2018 invoices,⁶ but no others.

26. After the nonpayment, Cityside placed the account on hold and made repeated inquiries to Greenspoon Marder regarding payment. However, Cityside continued and continues to store the Stored Materials.

27. In September 2018, Joel Sanders, the Chief Operating Officer of Greenspoon Marder, promised Cityside to attempt to resolve the delinquency.

28. On November 14, 2018, Cityside followed up again with Greenspoon Marder regarding its months-overdue payments.

⁶ Payment of the September, 2018 invoice was not tendered until March 27, 2019.

29. In response to Cityside's inquiry, Greenspoon Marder, for the first time, declared that it was not liable for any obligations under the Agreement because only "Jacob, Medinger & Finnegan ('JMF') and Cityside Archives, LLC ('Cityside') [were] parties to the Storage and Service Agreement ('Agreement')," and that despite paying invoices for nearly two years and making multiple requests to Cityside in connection with the Stored Materials, it had not assumed the Agreement.⁷

30. In response, Cityside asked for the contact information for the person at Jacob Medinger that Cityside should contact regarding payment of the outstanding balance on the account.

31. Greenspoon Marder simply responded by claiming that Jacob Medinger "no longer exists."

32. On December 4, 2018, Cityside advised Greenspoon Marder that as a result of its failure to pay the outstanding invoices, it was in default of the Agreement.

33. On January 15, 2019, Cityside advised Greenspoon Marder that as a result of its default under the Agreement, Cityside was exercising its rights pursuant to Section 7.2(a), and demanded that Greenspoon Marder begin pick-up of all Stored Materials within 45 days, *i.e.*, no later than February 28, 2019, as well as tender all charges associated with the termination of the account totaling \$447,543.62, including for permanent removal of the Stored Materials, plus any additional storage charges by then accrued.⁸

⁷ A true copy of the November 14, 2018 letter is attached as Exhibit E.

⁸ A true copy of the January 15, 2019 letter is attached as Exhibit F.

34. Greenspoon Marder has failed and refused to pick up its Stored Materials or tender payment for the termination-related or other charges.

35. Greenspoon Marder has also continued to withhold payment of Cityside's storage and service charges billed beginning with the March 2018 invoice, except for the April and September 2018 invoices.

36. Together, as of April 4, 2019, the sums due, owing, and unpaid to Cityside under the Agreement total at least \$471,038.11 and are continuing to increase as monthly storage charges come due.

COUNT I

(Declaratory Judgment Relating to the Agreement, Pursuant to CPLR § 3001)

37. Cityside repeats the allegations of Paragraph 1 through 36 as though set forth at length herein.

38. Jacob Medinger was acquired by Greenspoon Marder in or about March of 2016. Cityside was advised that Greenspoon Marder had acquired Jacob Medinger and assumed all rights and obligations under the Agreement.

39. After the acquisition, Greenspoon Marder, for a two-year period, requested and received services pursuant to the Agreement, and paid all invoices during that period.

40. Having acquired Jacob Medinger, Greenspoon Marder, by operation of law, succeeded to Jacob Medinger's obligations under the Agreement.

41. Having advised Cityside that it was assuming the Agreement and having repeatedly requested services thereunder and having paid for them as billed,

Greenspoon Marder is deemed to have assumed Jacob Medinger's obligations under the Agreement.

42. Cityside reasonably relied on the express and implied representations that the Agreement would be assumed by Greenspoon Marder and therefore did not terminate the Agreement upon the dissolution of Jacob Medinger. Accordingly, Greenspoon Marder, by its course of conduct with Cityside during the two-year period following its acquisition of Jacob Medinger, is estopped from disavowing its assumption of the Agreement.

43. The Agreement provides that "[i]n the absence of an executed contract, the act of tendering Stored Material(s) to Cityside for storage and/or other services shall constitute acceptance by the Client to the terms, conditions and rates of this contract." Pursuant to that provision of the Agreement, Greenspoon Marder accepted the terms, conditions and rates of the Agreement when it requested and received services from Cityside, including by maintaining Stored Materials at, withdrawing them from, and refiling them with Cityside.

44. Greenspoon Marder has wrongfully disclaimed its obligations under the Agreement.

45. Accordingly, there is a justiciable controversy between Cityside and Greenspoon Marder.

WHEREFORE, Cityside demands judgment against Greenspoon Marder on Count I as follows:

A. A Declaratory Judgment that Greenspoon Marder is bound by the Agreement and is liable for any failures on its part to comply with any obligations under the Agreement;

B. For reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to the Agreement;

C. For interest and costs of suit; and

D. For such further relief as the Court deems just and equitable.

COUNT II
(Breach of Contract)

46. Cityside repeats the allegations of Paragraph 1 through 45 as though set forth at length herein.

47. The Agreement is a valid contract by which Greenspoon Marder is bound.

48. Pursuant to the Agreement, Greenspoon agreed to pay certain sums to Cityside for its services and additional sums upon default.

49. Cityside has fully performed under the Agreement.

50. Greenspoon Marder is in default under the Agreement as a result of its failure and refusal to pay nearly all of Cityside's monthly invoices for its services beginning in March 2018.

51. Greenspoon Marder has breached the Agreement by failing and refusing to pay nearly all of Cityside's monthly invoices for its services beginning in March 2018 and the charges that arose from its default, the foregoing sums totaling at least \$471,038.11 and continuing to increase.

52. As a direct and proximate result of Greenspoon Marder's failure to make payments required by the Agreement, Cityside has been damaged.

WHEREFORE, Cityside demands judgment against Greenspoon Marder on Count II as follows:

- A. For compensatory damages in the amount of at least \$471,038.11, due to Cityside under the Agreement;
- B. For any additional compensatory damages, including consequential damages;
- C. For reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to the Agreement;
- D. For interest and costs of suit; and
- E. For such further relief as the Court deems just and equitable.

COUNT III
(Unjust Enrichment)

53. Cityside repeats the allegations of Paragraphs 1 through 52 as though set forth at length herein.

54. Greenspoon Marder has reaped and will reap the benefits of Cityside's records storage and management services.

55. In agreeing to provide the foregoing services, Cityside expected payment for its services.

56. Greenspoon Marder's refusal to compensate Cityside for all sums owing to Cityside will result in Greenspoon Marder being unjustly enriched.

57. It would be unjust for Greenspoon Marder to retain the benefits without paying Cityside all sums owed pursuant to the Agreement.

58. As a result, Cityside has suffered damages.

WHEREFORE, Cityside demands judgment against Greenspoon Marder on Count III as follows:

- A. For compensatory damages to be determined at trial;
- B. For reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to the Agreement;
- C. For interest and costs of suit; and
- D. For such further relief as the Court deems just and equitable.

COUNT IV
(Promissory Estoppel)

59. Cityside repeats and realleges the allegations of paragraphs 1 through 58 as though set forth herein at length.

60. Greenspoon Marder made a clear and definite promise to Cityside to pay certain sums for services provided by Cityside pursuant to the Agreement.

61. Greenspoon Marder's statements and actions induced Cityside Archives to provide services pursuant the Agreement.

62. Cityside reasonably relied upon Greenspoon Marder's statements and actions in providing services pursuant the Agreement.

63. Despite receiving all services it requested pursuant to the Agreement, Greenspoon Marder has refused to pay all amounts due and owing to Cityside, causing Cityside to suffer damages.

64. Greenspoon Marder is estopped from disavowing its obligations under the Agreement.

WHEREFORE, Cityside demands judgment against Greenspoon Marder on Count IV as follows:

A. For compensatory damages in the amount of at least \$471,038.11, due to Cityside under the Agreement;

B. For any additional compensatory damages, including consequential damages;

C. For reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to the Agreement;

D. For interest and costs of suit; and

E. For such further relief as the Court deems just and equitable.

COUNT V

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

65. Cityside repeats and realleges the allegations of paragraphs 1 through 64 as though set forth herein at length.

66. Greenspoon Marder and Cityside are parties to a binding agreement in the form of the Agreement.

67. Cityside has fully performed all of the terms and conditions required and requested of it under the Agreement.

68. Implied in the Agreement was and is an obligation of good faith and fair dealing such that the parties would perform their respective obligations in a manner that would not impair the rights and the ability of the other party to receive consideration and benefit of their bargain.

69. The Agreement granted to Cityside the right to be compensated for the performance of its services in connection with the Agreement.

70. To the extent Greenspoon Marder's refusal to pay Cityside in accordance with the Agreement is not a breach of the express provisions of the Agreement, Greenspoon Marder remains liable for all amounts due and owing as a result of its breach of the implied covenant of good faith and fair dealing inherent in the Agreement.

WHEREFORE, Cityside demands judgment against Greenspoon Marder on Count V as follows:

A. For compensatory damages in the amount of at least \$471,038.11, due to Cityside under the Agreement;

B. For any additional compensatory damages, including consequential damages;

C. For reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to the Agreement;

D. For interest and costs of suit; and

E. For such further relief as the Court deems just and equitable.

Dated: May 1, 2019

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& SIEGEL, P.A.
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LLC



By: _____

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